

**United States Department of Labor
Employees' Compensation Appeals Board**

P.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 15-112
Issued: April 7, 2015**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

COLLEEN DUFFY KIKO, Judge

ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 21, 2014 appellant filed a timely appeal from a July 15, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for her accepted injury effective November 17, 2013.

FACTUAL HISTORY

On January 29, 2006 appellant, then a 42-year-old letter carrier, filed an occupational disease claim asserting that her repetitive duties including pushing, pulling, twisting, turning, lifting, and unloading caused her to develop a stress fracture in her lower back. She became

¹ 5 U.S.C. §§ 8101-8193.

aware of her condition and its relation to her work on November 1, 2005. OWCP initially denied appellant's claim, but on April 23, 2007 accepted temporary aggravation of stress fracture of the lumbar spine, temporary aggravation of degenerative disc disease and shoulder sprain. Appellant stopped work on January 10, 2006 and did not return.

Appellant was treated by Dr. William C. Hamilton, a Board-certified orthopedic surgeon, from January 12, 2006 to November 29, 2012 for low back pain radiating into her legs. Dr. Hamilton opined that appellant's delivering mail had caused or aggravated her back situation. He diagnosed lumbar spondylosis, stress reaction, spondylosis, degenerative disc disease, and lumbar radiculopathy. Dr. Hamilton noted that appellant had physical therapy and epidural injections. In a narrative and medical report form dated March 4, 2013, he diagnosed work-related lumbosacral strain, sprain, radiculopathy, and degenerative joint disease. On April 9, 2013 Dr. Hamilton noted that appellant could return to work full time with restrictions. In attending physician's reports dated March 8 and April 9, 2013, he diagnosed lumbar strain and lumbar radiculopathy. Dr. Hamilton checked a box "yes" that appellant's condition was caused by work activity. He noted that appellant could return to work with restrictions. A September 6, 2011 lumbar magnetic resonance imaging (MRI) scan revealed multilevel degenerative changes most pronounced at L4-5 where there was mild central canal stenosis, and stenosis of the lateral recesses bilaterally.

On August 1, 2013 OWCP referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, to determine if the accepted conditions had resolved. In an August 30, 2013 report, Dr. Smith noted that he reviewed the records provided and examined appellant. Appellant's gait and station were normal. Back examination revealed no spasm, atrophy, trigger points, or deformity. Active spinal range of motion was normal without any spasm or rigidity. Neurological examination was intact and nonfocal without any objective findings of deficit. Dr. Smith noted that a December 22, 2005 MRI scan of the lumbar spine revealed marrow edema within both L4 pedicles which was felt to be reactive and a nondisplaced left L5 pedicular fracture with reactive marrow edema and contralateral right pedicle which was thought to be subacute or chronic. He compared the December 22, 2005 MRI scan with the July 18, 2006 MRI scan which showed interval resolution of all marrow edema with no evidence of pseudoarthrosis, minimal anterolisthesis of the L4, L5 due to degenerative facet arthritis but nothing of a post-traumatic nature since no marrow edema was seen in the study. Dr. Smith further noted that the September 6, 2011 MRI scan again revealed no marrow edema and no progression of the L4-5 anterolisthesis that was thought to be due to marked facet hypertrophic changes rather than anything post traumatic. He opined that, according to the analysis of the sequential MRI scan studies, appellant's aggravation of the stress fracture and degenerative disc disease had resolved. Dr. Smith diagnosed temporary aggravation of the stress fracture at L4-5 segment and temporary aggravation of degenerative disc disease and shoulder sprain. He noted that appellant reported no complaints of shoulder pain and the condition had resolved without residuals. Dr. Smith opined that appellant was at maximum medical improvement with regard to the incident as the July 2006 MRI scan findings and confirmed in September 2011 revealed interval resolution of marrow edema. He noted that appellant could return to full-time work without restrictions due to the fact that her accepted conditions had resolved without residual. Dr. Smith noted that appellant no longer required any type of treatment or testing related to the accepted conditions.

In a work capacity evaluation dated August 30, 2013, he noted that appellant was at maximum medical improvement and could return to work regular duty without restrictions.

On September 16, 2013 OWCP proposed to terminate all wage-loss compensation and medical benefits finding that Dr. Smith's August 30, 2013 report established no continuing residuals of her work-related conditions.

In a statement dated September 26, 2013, appellant, through counsel, disagreed with the proposed termination. He argued that Dr. Smith had failed to provide medical reasons for his conclusion that appellant had recovered from her work injury and further failed to determine whether the disc herniation at L1-2 was work related. Counsel asserted that there was a conflict of opinion between Dr. Smith and Dr. Hamilton.

In a decision dated October 29, 2013, OWCP terminated appellant's compensation benefits effective November 17, 2013.

On November 4, 2013 appellant requested an oral hearing which was held on April 28, 2014. She submitted an October 23, 2013 report from Dr. Hamilton who noted appellant's continued complaints of back pain radiating down her leg. On examination, appellant could forward bend to her knees with minimal lumbar reversal. Sitting was restricted. Lower extremity strength and reflexes were symmetrical with no atrophy or weakness. Appellant was neurovascularly intact. Dr. Hamilton noted that she was not capable of returning to work in her usual capacity. In an October 30, 2013 work capacity evaluation, he diagnosed lumbar strain and radiculopathy. Dr. Hamilton noted that appellant could work full time with restrictions. On April 8, 2014 he noted appellant's continued complaints of pain in the right buttock down to her ankle. Appellant had mildly limited lumbar motion, no lower extremity atrophy or weakness, and reflexes were symmetrical. Dr. Hamilton noted that appellant had lost 105 pounds but her pain persisted and she did not believe she was capable of returning to work as a carrier because of the standing, walking, and carrying involved. In an April 8, 2014 form report, he diagnosed lumbar sprain/sprain, radiculopathy, and noted that appellant could not return to her preinjury job without restrictions. On April 16, 2014 Dr. Marc J. Medway, a Board-certified neurologist, performed an electromyogram (EMG) which revealed mild severity acute right L4-5 radiculopathy, mild-to-moderate severity bilateral chronic L4-5 and L5-S1 radiculopathy, no evidence of distal isolated nerve entrapment syndrome, and no evidence of peripheral neuropathy. He noted evidence of acute and chronic nerve root encroachment. Appellant also submitted medical evidence previously of record.

In a decision dated July 15, 2014, an OWCP hearing representative affirmed the decision dated October 29, 2013.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally

² *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

Under FECA, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying conditions.⁵

ANALYSIS

OWCP accepted appellant's claim for temporary aggravation of stress fracture of the lumbar spine, temporary aggravation of degenerative disc disease, and shoulder sprain. It referred her for a second opinion evaluation by Dr. Smith to determine the extent of her work-related condition.

In his August 30, 2013 report, Dr. Smith provided an extensive review of appellant's medical history and reported examination findings. He reported no clinical findings of any residuals or disability causally related to the accepted temporary aggravation of stress fracture of the lumbar spine, temporary aggravation of degenerative disc disease, and shoulder sprain. Dr. Smith opined that, according to the analysis of the sequential MRI scan studies, appellant's aggravation of the stress fracture and degenerative disc disease resolved. He advised that appellant was at maximum medical improvement with regard to the work conditions as the MRI scan findings noted in July 2006 and confirmed in September 2011 showed interval resolution of all marrow edema. Dr. Smith also noted that appellant had no complaints of shoulder pain. He opined that appellant could return to full-time work without restrictions as her accepted conditions had resolved without residual. Dr. Smith noted that appellant no longer required any type of treatment or testing related to the accepted conditions. In a work capacity evaluation dated August 30, 2013, he noted that appellant was at maximum medical improvement and could return to work regular duty without restrictions.

The Board finds that Dr. Smith's August 30, 2013 report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's wage-loss compensation and medical benefits. Dr. Smith's opinion is based on proper factual and medical history. He reviewed a statement of accepted facts and appellant's prior medical treatment and test results. Dr. Smith also related his comprehensive examination findings in

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁵ *Raymond W. Behrens*, 50 ECAB 221 (1999).

support of his opinion that the accepted work-related conditions had resolved. He reported no basis on which to find that appellant had any continuing residuals of her accepted temporary aggravation of stress fracture of the lumbar spine, temporary aggravation of degenerative disc disease, and shoulder sprain. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing residuals of the accepted condition.

Appellant submitted an October 23, 2013 report from Dr. Hamilton who noted her continued complaints of back pain radiating down her leg. Dr. Hamilton noted examination findings and opined that she was not capable of returning to her usual work. On October 30, 2013 he diagnosed lumbar strain and radiculopathy and noted that appellant could work full time with restrictions. In an April 8, 2014 report, Dr. Hamilton noted her continued symptoms, despite losing weight, and related that she did not believe she was capable of returning to work as a carrier because of the standing, walking, and carrying involved. Likewise, in a medical report form dated April 8, 2014, he diagnosed lumbar sprain/sprain, radiculopathy, and noted that appellant could not return to her preinjury job without restrictions. Although Dr. Hamilton supported that appellant had continuing symptoms and was unable to perform regular duties, none of the reports specifically explain how appellant's current conditions and continuing partial disability were causally related to the accepted condition. He did not provide sufficient medical rationale to explain why particular work duties would cause a continuing temporary aggravation of stress fracture of the lumbar spine, temporary aggravation of degenerative disc disease and shoulder sprain.⁶ The need for rationale is particularly important where degenerative changes were preexisting. Other reports from Dr. Hamilton are of limited probative value as these reports do not address how appellant's work duties caused or aggravated her temporary aggravation of stress fracture of the lumbar spine, temporary aggravation of degenerative disc disease, and shoulder sprain.⁷

Dr. Medway's April 16, 2014 report is also of limited probative value as this report does not address whether appellant's accepted conditions had resolved.⁸

On appeal, appellant asserted that Dr. Smith's report was not rationalized and his examination was cursory and therefore could not carry the weight of the evidence. She asserts that she continues to have residuals of her accepted work-related conditions and that there was a conflict of opinion between Dr. Smith and Dr. Hamilton with regard to whether appellant had residuals of the accepted work-related condition. The Board notes that in his August 30, 2013 report, Dr. Smith found that there were no clinical findings of any residuals or disability causally related to the accepted temporary aggravation of stress fracture of the lumbar spine, temporary aggravation of degenerative disc disease, and shoulder sprain. He opined that the accepted conditions had resolved. Although appellant submitted reports from Dr. Hamilton, these reports

⁶ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁷ *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁸ *Id.*

fail to sufficiently address how any continuing disability was causally related to the accepted employment conditions.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate wage-loss compensation and medical benefits effective October 29, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 15, 2014 is affirmed.

Issued: April 7, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board